AMENDED IN SENATE APRIL 5, 2001

AMENDED IN SENATE MARCH 26, 2001

# SENATE BILL                                          No. 364

## Introduced by Senator Alpert

February 21, 2001

An act to amend Section 2948.5 of the Civil Code, relating to mortgages and deeds of trust.

LEGISLATIVE COUNSEL'S DIGEST

SB 364, as amended, Alpert.    Mortgages and deeds of trust: accrual of interest.

Existing law provides that interest on the principal obligation of a promissory note secured by a mortgage or deed of trust on real property improved by one to 4 residential dwelling units shall not commence to accrue prior to close of escrow if the loan proceeds are paid into escrow or, if there is no escrow, the date upon which the loan proceeds have been made available for withdrawal as a matter of right. This provision does not apply if the funds are paid or made available from a ~~federally-insured~~ *federally insured* financial institution with an office in this state.

This bill instead would provide that a borrower ~~shall~~ *may* not be required to pay interest on a principal obligation under a promissory note secured by a mortgage or deed of trust on real property for a period of more than one day prior to recording the mortgage or deed of trust, if the loan proceeds are paid into escrow or, if there is no escrow, the date upon which the loan proceeds have been made available for withdrawal. The bill would additionally provide that *interest may begin accruing on the business day immediately preceding the day of*

*recording,* if the borrower requests and the lender agrees that the recording will occur on Monday or a day immediately after a bank holiday, ~~interest may begin accruing on the business day immediately preceding the day of recording, provided~~ *and if* the lender makes specified disclosures.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1.   Section 2948.5 of the Civil Code is amended to
2 read:
3     2948.5.   *(a)* A borrower shall not be required to pay interest
4 on a principal obligation under a promissory note secured by a
5 mortgage or deed of trust on real property for a period in excess
6 of one day prior to recording of the mortgage or deed of trust if the
7 loan proceeds are paid into escrow or, if there is no escrow, the date
8 upon which the loan proceeds have been made available for
9 withdrawal as a matter of right, as specified in subdivision (d) of
10 Section 12413.1 of the Insurance Code.
11     ~~Notwithstanding the foregoing, if the borrower affirmatively~~
12     *(b) Notwithstanding the foregoing, interest may commence to*
13 *accrue on the business day immediately preceding the day of*
14 *recording, if both of the following occur:*
15     *(1) The borrower affirmatively* requests, and the lender agrees,
16 that the recording will occur on Monday, or a day immediately
17 following a bank holiday, ~~interest may commence to accrue on the~~
18 ~~business day immediately preceding the day of recording,~~
19 ~~provided the lender discloses the~~.
20     *(2) The* following information *is disclosed* to the borrower in
21 writing: ~~(1)~~ *(A)* the amount of additional per diem interest charged
22 to facilitate recording on Monday or the day following a holiday,
23 as the case may be, and ~~(2)~~ *(B)* that it may be possible to avoid the
24 additional per diem interest charge by recording the deed of trust
25 on a day immediately following a business day. This disclosure
26 shall be provided to the borrower and acknowledged by the
27 borrower by signing a copy of the disclosure document prior to
28 placing funds in escrow.
29     ~~This~~

1   *(c) This* section does not apply if the loan proceeds are paid or
2 made available, as the case may be, in cash or by a check, cashier's
3 check, negotiable order of withdrawal, share draft, traveler's
4 check, or money order issued by, or drawn on, a financial
5 institution, the accounts of which are insured by an agency or
6 instrumentality of the United States, and which has an office in this
7 state from which payment may be obtained.

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